

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

BILLY KINDREX, JR.

PLAINTIFF

v.

CIVIL ACTION NO. 3:13-cv-98-HSO-RHW

TYRONE LEWIS, *Sheriff*

DEFENDANT

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
RESPONDENT'S MOTION TO DISMISS, AND DISMISSING PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on the Report and Recommendation [19] of Magistrate Judge Robert H. Walker, entered in this cause on October 29, 2013. On March 22, 2013, Petitioner Billy Kindrex, Jr., filed a prisoner's civil rights suit pursuant to 42 U.S.C. § 1983. Civil Action No. 3:12cv704-DPJ-FKB. On February 19, 2013, the habeas claims in Kindrex's Complaint were severed and filed as the present action. Order [1] Severing Habeas Claims. On May 13, 2013, Respondent Tyrone Lewis, the Sheriff of Hinds County, Mississippi, filed a Motion [14] to Dismiss Kindrex's habeas suit because Kindrex failed to exhaust his habeas claims in state court prior to requesting federal collateral relief. Kindrex filed a Response [15] to Lewis's Motion to Dismiss, and Lewis filed a Rebuttal [16].

After consideration of the Motion, the record, and relevant legal authorities, the Magistrate Judge recommended that Lewis's Motion [14] to Dismiss be granted and Kindrex's 28 U.S.C. § 2254 Writ of Habeas Corpus be dismissed because Kindrex did not exhaust his habeas claims in state court or establish sufficient cause to overcome his procedural default. Rep. and Rec. [19] at pp. 4-5.

Accordingly, the Magistrate Judge concluded that this Court is barred from

considering Kindrex's claims on their merits. *Id.* at p. 5.

The Magistrate Judge's Report and Recommendation advised Kindrex that he had fourteen days from the date he received the Report and Recommendation to serve and file written objections. *Id.* at p. 6. The Clerk of Court mailed the Report and Recommendation [19] to Kindrex via certified mail to his address of record at the Hinds County Penal Farm. The letter was returned with a handwritten notation that Kindrex had been released. Returned Mail [20]. During the early stages of this case, Kindrex was warned that "failure . . . to keep the Court informed of [his] current address may result in dismissal of this cause." Order [5]. Kindrex's failure to provide a current address is therefore inexcusable.

Where a party fails to file specific objections to a magistrate judge's proposed findings of fact and recommendation, the district court reviews the proposed findings of fact and recommendation for findings and conclusions that are clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1); *see United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). The Court finds that the Magistrate Judge properly recommended that Lewis's Motion [14] to Dismiss be granted and Kindrex's Petition [2] for Writ of Habeas Corpus be dismissed. After referral of hearing by this Court, no objections having been filed as to the Report and Recommendation, and the Court, having fully reviewed the same as well as the record and relevant law in this matter, finds that the Magistrate Judge's Report and Recommendation is neither clearly erroneous nor contrary to law and should be adopted in its entirety as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [19] of Magistrate Judge Robert H. Walker is adopted in its entirety as the opinion of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion [14] to Dismiss, filed by Respondent Tyrone Lewis, the Sheriff of Hinds County, Mississippi, is **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the 28 U.S.C. § 2254 Petition [2] for Writ of Habeas Corpus filed by Petitioner Billy Kindrex, Jr., is **DISMISSED WITH PREJUDICE**.

SO ORDERED AND ADJUDGED, this the 22nd day of January, 2014.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE